IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: September 18 ,2006

1. G.S.T.R. No.9 of 1993

M/s Partap Steel Rolling Mills Ltd. v. State of Punjab

2. G.S.T.R. No.10 of 1993

M/s Partap Steel Rolling Mills Ltd. v. State of Punjab

3. G.S.T.R. No.11 of 1993

M/s Partap Steel Rolling Mills Ltd. v. State of Punjab

4. G.S.T.R. No.12 of 1993

M/s Partap Steel Rolling Mills Ltd. v. State of Punjab

5. G.S.T.R. No.13 of 1993

M/s Partap Steel Rolling Mills Ltd. v. State of Punjab

Present: Mr.D.S.Brar, Advocate for the petitioner.
Mr.Amol Rattan, Additional Advocate General, Punjab.

CORAM:

Hon'ble Mr.Justice Adarsh Kumar Goel
Hon'ble Mr. Justice Rajesh Bindal

Rajesh Bindal, J.

This is a bunch of five reference petitions, relating to assessment years 1980-81, 1981-82, 1982-83, 1983-84 and 1984-85 respectively, wherein the Sales Tax Tribunal, Punjab (for short, `the Tribunal') has referred the following question of law for opinion of this Court:

> "Whether in the facts and circumstances of the case, the assessee is entitled to the relief, claimed by him under Rule 29(xii) of the Punjab General Sales Tax Rules, 1949 on account of purchase value of furnace oil used as an aid to manufacturing iron and steel goods?"

The facts have been taken, as mentioned in the statement of case for

the assessment year 1980-81, which form part of G.S.T.R. No. 9 of 1990.

The petitioner (hereinafter described as `the assessee') was a dealer engaged in the manufacture and sale of iron and steel. For the assessment year 1980-81, the assessee furnished its quarterly returns which were revised later on. Vide assessment framed on 2.7.1986, the claim of the assessee for deduction from turnover under Rule 29(xii) of the Punjab General Sales Tax Rules, 1949 (for short, `the Rules') on account of purchase value of furnace oil used in manufacture was allowed. Subsequently, on 4.4.1991, the revisional authority issued notice to the assessee under Section 21(1) of the Punjab General Sales Tax Act, 1948 (for short,`the Act') on the ground that deduction under Rule 29(xii) of the Rules had been allowed wrongly. Accordingly, the same was disallowed vide order dated 24.6.1991. Revision of the assessee before the Tribunal against the order passed by the revisional authority was dismissed vide order dated 28.2.1992 with the following observations:

> "I have considered the arguments of both the parties and seen the record of the case. The main question involved in this case is whether furnace oil consumed by the applicant is directly used in the process of manufacturing purpose or not. Out of this issue, so many points arise. These are being considered/discussed and adjudicated here.
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> Firstly, whether furnace oil purchased or used is an aid at manufacture and not as essential raw material. In this regard, I agree with the counsel for the State that furnace oil is used for ancillary purpose in the process of manufacturing. Mere inclusion of furnace oil in the Registration Certificate will not entitle the assessee to benefit and claim deduction under Rule 29(xii) unless and until the items so purchased taxable at first stage have been directly used as raw material in the process of manufacturing of taxable goods for sale. The other plea of the counsel for the applicant is that it has been used as chemical and not as an energy has also no force. Neither it is borne by record nor it can be said as per the process of manufacturing involved." (sic)

The relevant provisions of Rule 29(xii) of the Rules are extracted

below:

"**Rule 29**

In calculating his taxable turnover a registered dealer may deduct from his gross turnover:

(xii) the purchase value of goods which have already been subjected to tax under Section 5(1-A) used or consumed by him in manufacture in Punjab of goods other than goods declared tax free under Section 6 for sale:

(i) in Punjab;

(ii) in the course of inter-State trade or commerce;

(iii) in the course of export out of territory of India;

Provided that the dealer produces copies of cash memos or bills prescribed under rule 55-A at the time of assessment or when called upon to do so, by notice, by the competent authority under the Act."

Shri D.S.Brar, learned counsel for the assessee submitted that the assessee is a manufacturer of steel rolled products, which are taxable under the Act. For the purpose of manufacturing, the assessee purchased goods specified in its certificate of registration granted under the Act and one of the items mentioned thereunder is furnace oil. It is further submitted that furnace oil is one of the primary and essential commodity used by the assessee in the process of manufacturing and without use thereof, the production itself is not possible. During the year in question, the assessee purchased certain quantity of furnace oil from M/s Bharat Petroleum Corporation and M/s Indian Oil Corporation on payment of tax, which was leviable at first stage of sale.

The contention of the assessee is that the provisions of Rule 29(xii) of the Rules have been wrongly interpreted by the authorities, resulting in denying the benefit of deduction of purchase value of the goods from the taxable turnover of the assessee, which had been used by the assessee in the manufacture of other

goods. According to the learned counsel for the assessee, the furnace oil, so purchased by the assessee on payment of tax, was used by it in manufacture of iron and steel products and without use of furnace oil, the production itself was not feasible. Once the assessee had been granted right to purchase furnace oil for use in manufacture by mentioning the same in the registration certificate, there was no reason to deny the benefit thereof at a later stage. To buttress his arguments, learned counsel for the assessee relied upon the judgments of Hon'ble the Supreme Court in M/s J.K.Cotton Spinning and Weaving Mills Co.Ltd. v. The Sales Tax Officer, Kanpur and another, AIR 1965 SC 1310; Indian Copper Corporation Ltd. v. The Commissioner of Commercial Taxes, Bihar, Patna and others, AIR 1965 SC 891 and Collector of Central Excise, New Delhi v. Ballarpur Industries Ltd., (1990) 77 STC 282 and of various High Courts in Commercial Taxes Officer v. Hindustan Radiator, (1986) 62 STC 374 (Rajasthan); Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. K.V.Balakrishnan, (1991) 81 STC 424 (Kerala); Khoday Distilleries (P.) Ltd. v. Commissioner of Commercial Taxes, Karnataka and others, (1991) 82 STC 251 (Karnataka) and Saurashtra Calcine Bauxite and Allied Industries v. State of Gujarat, (1993) 91 STC 435.

On the other hand, Mr.Amol Rattan, learned Additional Advocate General, Punjab controverted the arguments raised on behalf of the assessee and submitted that the furnace oil having not passed on in the end-product, cannot be said to be used in the manufacture, as the intention of the rule is to grant benefit on the raw materials used in the manufacture, which ultimately are reflected in the end-product and not in other items. To substantiate his plea, he has relied upon Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Thomas Stephen & Co. Ltd., (1988) 69 STC 320 and Coastal Chemicals Ltd. v. Commercial Tax Officer, A.P. and others, (1999) 8 SCC 465.

Controversy in the present case revolves around the interpretation of

Rule 29(xii) of the Rules, which provides for deduction of purchase value of goods `used' or `consumed' by an assessee in the manufacture of other goods for sale. It is further narrowed down to consider the true spirit of words `used' or `consumed' and the term `in the manufacture of other goods', as mentioned in the Rule.

More than four decades back, this issue came up for consideration before Hon'ble the Supreme Court in Burmah Shell Oil & Storage Distributing Co. India Ltd. v. The Belgaum Borough Municipality, (1963) Supp. 2 S.C.R. 216, wherein a Constitution Bench held as under:

> "The word consumption in its primary sense means the act of consuming and in ordinary parlance means the use of an article in a way which destroys, wastes or uses up that article. But in some legal contexts, the word `consumption' has a wider meaning. It is not necessary that by the act of consumption the commodity must be destroyed or used up. The word "consumption" occurs in explanation to sub-Article 1 of Article 286 of the Constitution. In explaining the ambit of that word this Court observed in *The State of Bombay v. The United Motors (India) Ltd.,* [1953] S.C.R.1069 as follows:
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> > "The expression "for the purpose of consumption in that State" must, in our opinion, be understood as having reference not merely to the individual importer or purchaser but as contemplating distribution eventually to consumers in general within the State."
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> It is not the immediate person who brings the goods into a local area who must consume them himself, the act of consumption may be postponed or may be performed by someone else but so long as the goods have been brought into the local area for consumption in that sense, no matter by whom, they satisfy the requirements of the Boroughs Act and octroi is payable. Added to the word "consumption" is the word "use" also. There may be certain commodities which though put to use are not `used up' in the process. A motor-car brought into an area for use is not used up in the same sense as food-stuffs. The two expressions use and consumption together therefore, connote the bringing in of goods and animals not with a view to taking them out again but with a view to their retention either for use without using them up or for

consumption in a manner which destroys, wastes or uses them up. In this context, the word "consumption", as has been shown above, must receive a larger meaning than merely the act of consuming in the generally understood sense. Recently, in *M/s Anwarkhan Mahboob Co. v. The State of Bombay,* [1961] 1 S.C.R. 709 while dealing with the Explanation to Article 286(1), this Court observed as follows:

> "In answering that question it is unnecessary and indeed inexpedient to attempt an exhaustive definition of the word "consumption" as used in the explanation to Art. 286 of the Constitution. The act of consumption with which people are most familiar occurs when they eat, or drink or smoke. Thus, we speak of people consuming bread, or fish or meat or vegetables, when they eat these articles of food; we speak of people consuming tea or coffee or water or wine, when they drink these articles; we speak of people consuming cigars or cigarettes or bidis, when they smoke these. The production of wealth, as economists put it, consists in the creation of "utilities." Consumption consists in the act of taking such advantage of the commodities and services produced as constitutes the `utilization' thereof. For each commodity, there is ordinarily what is generally considered to be the final act of consumption. For some commodities, there may be even more than one kind of final consumption. Thus grapes maybe "finally consumed" by eating them as fruits; they may also be consumed by drinking the wine prepared from "grapes." Again, the final act of consumption may in some cases be spread over a considerable period of time. Books, articles of furniture, paintings may be mentioned as examples. It may even happen in such cases that after one consumer has performed part of the final act of consumption, another portion of the final act of consumption may be performed by their heir or successor-in-interest, a transferee, or even one who has obtained possession by wrongful means. But the fact that there is for each commodity what may be considered ordinarily to be the final act of consumption, should not make us forget that in reaching the stage at which this final act of consumption takes place the commodity may pass through

> different stages of production and for such different stages, there would exist one or more intermediate acts of consumption..... In the absence of any words to limit the connotation of the word "consumption" to the final act of consumption, it will be proper to think that the constitution-makers used the word to connote any kind of user which is ordinarily spoken of as consumption of the particular commodity." *[Emphasis supplied]*

Further, in Kathiawar Industries Ltd. v. Jaffrabad Municipality, AIR 1979 SC 1721, while considering the meaning of words "consumption" and "use", Hon'ble the Supreme Court held as under:

> "6. In this appeal, it is necessary for us to consider the scope of the words "consumption" and "use". The precise meaning to be given to the words "consumption" and "use" will depend upon the context in which they are used. These words are of wide import in the Constitution of India, Entry 52 in List II in Seventh Schedule a right to impose tax "on entry of goods into the local area for consumption, use or sale" is conferred. In Burmah Shell. Oil Storage and Distributing Co. India Ltd. v. The Belgaum Borough Municipality 1963 Supp (2) SCR 216, this Court after tracing the history of octroi and terminal tax observed that while terminal tax is a kind of octroi which is concerned only with the entry of goods in a local area irrespective of whether they would be used there or not, octrois were taxes on goods be sought into the area for consumption, use or sale. They were leviable in respect of the goods put to some use or the other in the area but only if they were meant for such user.
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> 7. In considering the meaning of the words "consumption" and "use" this Court observed in Burmah Shell case (supra) that the word `consumption' in its primary sense means the act of consuming and in ordinary parlance means the use of an article in a way which destroys, wastes or uses up that article. But in some legal contexts, the word "consumption" has a wider meaning. It is not necessary that by the act of consumption the commodity must be destroyed or used up."

M/s J.K.Cotton Spinning and Weaving Mills Co.Ltd. v. The Sales Tax Officer, Kanpur (supra) is the celebrated judgment interpreting the

expression"in the manufacture of goods", as referred to in Section 8(3)(b) of the Central Sales Tax Act, 1956, which is being followed till date. The issue under consideration in the judgment was as to whether drawing and photographic material can be regarded as goods intended for use in the manufacture of goods. While dealing with the question, Hon'ble the Supreme Court held as under:

> "The expression "in the manufacture of goods" in S.8(3)(b) should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods".
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> If the process of designing is so intimately connected with the process of manufacture of cloth there is no reason to regard the process of designing as not being a part of the process of manufacture within the meaning of R.13 read with S.8(3)(b). The process of designing may be distinct from the actual process of turning out finished goods. But there is no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. The expression "in the manufacture" takes in within its compass, all processes which are directly related to the actual production. Goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for specification. Drawing and photographic materials falling within the description of goods intended for use as `equipment' in the process of designing which is directly related to the actual production of goods and without which commercial production would be inexpedient must be regarded as goods intended for use "in the manufacture of goods."
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> *[Emphasis supplied]*

The principles laid down in M/s J.K.Cotton Spinning's case (supra) were applied by Hon'ble the Supreme Court in Member, Board of Revenue, West Bengal v. Phelps and Co. (P.) Ltd., (1972) 29 S.T.C. 101, wherein it was held that the gloves used by the workers of a manufacturer in hot jobs and in handling

corrosive substances in the course of manufacture would amount to use in manufacture.

In Collector of Central Excise v. Jay Engineering Works Ltd., (1989) 39 E.L.T. 169 (SC), the assessee therein, who was manufacturer of electric fans, brought into its factory nameplates which were affixed to the fans before marketing them. The question was whether these nameplates were to be considered as used in manufacture of other excisable goods. Finding that no electric fan could be removed from the factory for being marketed without the nameplate, the same was held to be used in manufacture, even though the electric fan could work even without nameplate.

While relying upon the judgment in Jay Engineering Works Ltd.'s case (supra), in Collector of Central Excise, Calcutta-II v. M/s Eastend Paper Industries Ltd., AIR 1990 SC 1893, Hon'ble the Supreme Court, while considering as to whether wrapping papers were consumed or utilised by the assessee as component parts or raw materials for the finished goods, held as under:

> "To be able to be marketed or to be marketable, it appears to us, in the light of facts in the appeals, that it was an essential requirement to be goods, to be wrapped in paper. Anything required to make the goods marketable must form part of the manufacture and any raw material or any materials used for the same would be component part for the end product. In our opinion, the Tribunal was right in the view it took. There is no ground to interfere in these appeals."

In Indian Farmers Fertiliser Co-operative Ltd. v. Collector of Central Excise, Ahmedabad, AIR 1996 SC 2542, the question before Hon'ble the Supreme Court was as to whether exemption in respect of naphtha as is used in the manufacture of Ammonia provided such Ammonia is used elsewhere in the manufacture of fertilisers was available in case such Ammonia is used in the Effluent Treatment Plant in the unit itself. Following passages from the judgment would be relevant:

> "3. By an Exemption Notification (No.187/61) issued under the

provisions of Rule 8 of the Central Excise Rules, the Central Government exempted raw naphtha falling under Item No.6 of the First Schedule to the Central Excise and Salt Act, 1944, from the payment of excise duty in excess of Rs. 4.36 per kilolitre at 15 degrees centigrade. The Exemption Notification applied "in respect of such raw naphtha as is used in the manufacture of Ammonia provided such Ammonia is used elsewhere in the manufacture of fertilisers" and the procedure set out in Chapter-X of the said Rules was followed.

4. The appellants manufacture urea, which is a fertiliser, at a plant at Kalol in the State of Gujarat and utilise for the purpose raw naphtha. The raw naphtha was obtain at the concessional rate of duty and was used for producing ammonia which, in turn was used, partly, directly in the urea plant and, partly, indirectly, in the submission of the appellants in the production of urea by being employed in off-site plants, namely, the water treatment plant, stream generation plant, inert gas generation plant and effluent treatment plant, all of which were parts of the integral process of the manufacture of urea.

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9. That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end product is part and parcel of the manufacturing process of that end product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption.

10. In the result, the appeals are allowed. The orders under appeal are set aside. It is held that the raw naphtha used to produce ammonia which is used in the water treatment, steam generation, inert gas generation and effluent treatment plants of the urea plant of the

appellant is entitled to the exemption provided by the Exemption Notification No.187/61 as amended from time to time."

[Emphasis supplied]

In Collector of Central Excise, New Delhi v. Ballarpur Industries Ltd. (supra), while considering the issue as to whether sodium sulphate, which was burnt up in the process of manufacture and not retained in the paper, could be considered as raw material, Hon'ble the Supreme Court answered the same in favour of the assessee. Following passage of that judgment would be relevant:

"The Superintendent of Central Excise, Range-2, Yamunanagar, declined the *pro forma* credit to the duty paid on "sodium sulphate" on the ground that sodium sulphate "was burnt up in the process of manufacture and was not retained in the paper" and that, therefore, it could not be considered "raw material" in the manufacture of paper. Accordingly, he caused a notice dated 18th January, 1983, to be issued requiring respondent to show cause why the amounts of *pro forma* credit availed of by the respondent for the period between 28th February, 1982 and 31st October, 1982, should not be recovered. The reason why "sodium sulphate" could not be held to be a "raw material" in the manufacture of paper was set out in the notice thus:

"... The *pro forma* credit claimed and granted in respect of the above mentioned items from 28th February, 1982 to 31st October, 1982, is not admissible *because these chemicals are burnt out and do not remain in the finished product.* The amount of *pro forma* credit availed is, therefore, liable to be recovered...." *(Emphasis supplied)*.

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We also find no substance in the contention of Sri Ganguly that the process in which the sodium sulphate was used, was anterior to and at one stage removed from the actual manufacture of paper. Sri Sorabjee's answer to this contention is, in our view, appropriate. That apart, the following observations in *Collector of Central Excise v. Eastend Paper Industries Ltd.* [1990] 77 STC 203 (SC); [1989] 43 ELT 201 (SC), cited by Sri Ganguly himself is a complete answer:

"...Where any particular process, this Court further emphasised, is so integrally connected with the ultimate production of goods that, but for that process, manufacture or

> processing of goods would be commercially inexpedient, articles required in that process, would fall within the expression `in the manufacture of goods'....."

On a consideration of the matter, we are persuaded to the view that the Tribunal was right in its conclusion that sodium sulphate was used in the manufacture of paper as "raw material" within the meaning of the Notification No. 105/82-CE dated 28th February, 1982."

In Delhi Electric Supply Undertaking v. Central Board for the Prevention and Control of Water of Pollution and another, 1995 Supp (3) SCC 385, the question was regarding levy of cess under Water (Prevention and Control of Pollution) Cess Act, 1977 on the water, which was drawn by the Company from river Yamuna for cooling purpose and after use, the same was charged back into the river. While considering as to whether this amounts to consumption, Hon'ble the Supreme Court held as under:

> "We have heard Dr. Singhvi, learned counsel appearing for the appellant. The only contention raised before the appellate authority was that the water was being used for cooling the turbines and other equipments in the thermal generating industries. It was contended that the water was drawn from River Yamuna for that purpose and after utilising the same for cooling purposes, it was discharged back in the river. On these facts it was argued that the utilisation of the water was not "consumption" under the Act. The appellate authority rejected the contention and came to the conclusion that the supply of water was measured by the meters which were installed at the entry of the factory. On that basis the water which entered the factory was taken to be consumed. We see no ground to interfere with the reasoning and the conclusions reached by the appellate authority as upheld by the High Court."

In Jaypee Rewa Cement v. Commissioner of Central Excise, M.P., (2001) 8 SCC 586, Hon'ble the Supreme Court considered the question whether the explosive used to extract limestones from mines could be treated as inputs for the manufacture of cement so as to entitle the assessee to claim MODVAT credit

under Rule 57A of the Central Excise Rules, 1944 and held as under:

> "Admittedly, explosives fall under Chapter 36 of the Schedule to the Central Excise Tariff Act, 1985. The particular items used by the appellant come under Headings 36.01, 36.02 and 36.03. Therefore, they fall under column (2) of the Table annexed to the notification dated 1.3.1994. While cement comes under Chapter 25 and is a final product falling under column (3) of the Table. Therefore, both explosives as well as cement fall under column (2) and column (3) respectively of that Table.
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> A reading of Rule 57-A clearly shows that the notification is to specify the goods used in or in relation to the manufacture of the final product, whether directly or indirectly. In the present case, inputs which were used in relation to the manufacture even directly would be regarded as inputs for the purpose of Rule 57-A. Rule 57-A(1) does not, in any way specify that the inputs have to be utilised within the factory premises. The Explanation contained in Rule 57-A is merely meant to enlarge the meaning of the word "input" and does not in any way restrict the use of the input to within the factory premises.
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> The appellant could not have claimed for MODVAT credit in respect of limestone because of the provisions of Rule 57-C, inasmuch as there was an exemption from levy of excise duty in respect thereof for a certain period and for the rest of the period the tariff itself provided that there would be nil rate of duty on the limestone which was extracted.
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> CEGAT has ignored Rule 57-J, which will be applicable notwithstanding anything contained in the other Rules. Pursuant to Rule 57-J, notification was issued on 20.6.1986 which was amended from time to time. Explosives fall under column (2) of the notification being a tariff item in Chapter 36; the intermediate product, namely, limestone being a tariff item in Chapter 36; the intermediate product, namely, limestone falls under column (3) being covered by Chapter 25; and the final product, namely, cement also falls under Chapter 25 and therefore under column (4). The reading of Rule 57-J along with the said notification shows that even in respect of inputs used in the manufacture of intermediate product which product is then used for the manufacture of a final product, the

> manufacturer would be allowed credit on the duty paid in respect of the input. On the explosives a duty had been paid and the appellant would be entitled to claim credit because the explosives were used for the manufacture of the intermediate product, namely, limestone which, in turn, was used for the manufacture of cement."

In Vasuki Carborundum Works v. The State of Gujarat, (1979) 43 STC 294, a Division Bench of Gujarat High Court, while considering as to whether purchase of *kathi* (twine) by a dealer engaged in the manufacture of crockery and carborundum could be held to be used in the process of manufacture, answered the question in favour of the assessee and held as under:

> "That although a process or an activity may not be necessary, theoretically, for production of finished goods, if it is such an integral part of the ultimate manufacture of goods that in its absence the manufacture may not be commercially expedient, that activity or process must be considered as manufacturing activity itself and the goods intended for use in that process or activity should be considered to be goods required in the manufacture of taxable goods for sale. Under section 13(1)(B), the articles which can be purchased tax-free on furnishing a prescribed certificate by a manufacturer must be either raw materials or processing materials or consumable stores. But it cannot be said that the consumable stores must necessarily partake the nature of raw materials or processing materials or must more or less stand on the same footing. If consumable stores or materials required in a process or activity which is integrally connected with the manufacturing activity and without which the activity of manufacture may be commercially inexpedient, such consumable stores or materials can be purchased by an assessee free of tax under section 13(1)(B). Kathi is part of such consumable stores which would be necessarily required in the activity of marketing the goods which is essentially connected with the larger activity of manufacture. The Tribunal was, therefore, not justified in holding that kathi purchased and used by the assessee for the packing of the goods for sale was not purchased and used as consumable stores in the process of manufacture of goods for sale."

In Saurashtra Calcine Bauxite and Allied Industries' case (supra),

while relying upon J.K.Cotton Spinning's case (supra) and Ballarpur Industries Ltd.'s case (supra) and distinguishing Thomas Stephen & Co. Ltd.'s case (supra), a Division Bench of Gujarat High Court held that furnace oil used to produce heat in the process of calcination of raw bauxite into calcined bauxite and for the purpose of heating the mixture of soda ash and silica in the manufacture of sodium silicate, is not merely a fuel rather a key process in the manufacture which could not have been acquired without the use of the furnace oil. If the furnace oil was not used, the heating process could not have been accomplished and the end-product could not have been achieved. Accordingly, it was held that the furnace oil used in both the cases was processing material and not merely as fuel.

In K.V.Balakrishnan's case (supra), a Division Bench of Kerala High Court, while considering the words “consumed in the manufacture of”, held that in the manufacture of wet grinders various items such as bearings, crown, belt, fire-clay, drums, cables, hardware, paint, casting iron scrap, etc., are taken advantage of and utilised for the end-product. The said items are components which go into the making of the end-product. The said items must be held to have been consumed in the manufacture of other goods for sale.

As far as reliance on the judgment of Hon'ble the Supreme Court in Thomas Stephen & Co. Ltd.'s case (supra) by the respondent is concerned, while delivering the judgment, their Lordships relied upon an earlier judgment in Deputy Commissioner of Sales Tax v. Pio Food Packers, (1980) 46 STC 63 and distinguished Ganesh Prasad Dixit v. Commissioner of Sales Tax, (1969) 24 STC 343. The correctness of the judgment in Pio Food Packers' case (supra), which was relied upon in Thomas Stephen & Co. Ltd.'s case (supra), was doubted by Hon'ble the Supreme Court in Assistant Commissioner (Intelligence) IV, Hyderbad v. Nandanam Construction Co., (1994) 95 STC 601 and the matter was directed to be heard by a Constitution Bench. The judgment of Hon'ble the Constitution Bench is reported as Assistant Commissioner (Intelligence) v. Nandanam

Construction Company, (1999) 115 STC 427, wherein the view taken in Pio Food Packers' case (supra) was partly over-ruled and the earlier judgment in Ganesh Prasad Dixit's case (supra) was approved. The judgment of Hon'ble the Constitution Bench was delivered on 21.9.1999. The view taken in Thomas Stephen & Co. Ltd.'s case (supra) was followed in Coastal Chemicals Ltd.'s case (supra), vide judgment dated 14.10.1999. Judgment of the Constitution Bench was not referred to therein.

Even otherwise, the provisions for consideration before Hon'ble the Supreme Court in Thomas Stephen & Co. Ltd.'s case (supra) were different from the provisions of Rule 29(xii) of the Rules, which are under consideration in the present case. Accordingly, the principles laid down in that case would not be of any help to the respondent.

As far as the judgment of Hon'ble the Supreme Court in Coastal Chemicals Ltd.'s case (supra) is concerned, the same is also of no help to the respondent, as in the said judgment, the question of interpretation of an Entry was there, which was interpreted by Hon'ble the Supreme Court by applying the principles of statutory interpretation- Noscitur a sociis, which is not relevant for the purpose of decision of the present case.

In view of our above discussions and the fact that furnace oil purchased by the assessee is one of the primary and essential commodity used by the assessee in the process of manufacture and without use thereof, the production itself was not possible. Further that deduction was available on account of purchase value of the goods, which have already been subjected to tax, having been “used” or “consumed” in the manufacture of goods is quite wider in its application, as interpreted by Hon'ble the Supreme Court in Burmah Shell Oil & Storage Distributing Co. India Ltd.'s case (supra) and Kathiawar Industries Ltd.'s case (supra). Still further, there being no dispute that the goods so purchased by the assessee had been subjected to tax and were used in the manufacture of goods

other than tax free goods in the State of Punjab, we are of the view that the assessee is entitled to deduction on account of purchase value of furnace oil in the manufacture of iron and steel goods under Rule 29(xii) of the Rules.

Accordingly, the question is answered in favour of the assessee and against the revenue.

(Rajesh Bindal)
Judge

(Adarsh Kumar Goel)
Judge

September 18 , 2006
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